

# **EXHIBIT 3**

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**From:** Brown, Nancy A <BrownN@SEC.GOV>  
**Sent:** Tuesday, September 3, 2019 8:38 AM  
**To:** Johnstone, Chris  
**Cc:** Kaufman, Jack; Bromberg, Katherine; Daniels, Jon; randall.lee@cooley.com  
**Subject:** RE: SEC v. Honig et al.  
**Attachments:** FW: SEC v. Honig; FW: SEC v. Honig

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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**EXTERNAL SENDER**

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Chris,

Thank you for your email.

With respect to the last two grounds for our motion, I can confirm that your agreement to produce the documents and a privilege log obviates the need for such a motion.

With respect to our proposed motion to compel Ladd to comply with our April 23, 2019 document request by producing documents from MGT, we plan to pursue that. Attached are two emails in which I previously raised this issue and to which you never responded. In addition, our notes of our meet and confer on August 8 reflect that I raised that issue with you again and you would not confirm that you never asked MGT for authority to produce the documents. If you have since asked MGT for authority and the Company has rejected your request, please let us know and we will reconsider our approach, including whether to press the motion to compel Ladd to produce the documents. Finally, whether we seek to enforce our subpoena to MGT or our document request to Ladd is our choice. I have explained our thinking in seeking to compel the production from Ladd, a party.

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**From:** Johnstone, Chris <Chris.Johnstone@wilmerhale.com>  
**Sent:** Friday, August 30, 2019 10:31 PM  
**To:** Brown, Nancy A <BrownN@SEC.GOV>; Bromberg, Katherine <BrombergK@SEC.GOV>; Daniels, Jon <danielsj@SEC.GOV>; Tenreiro, Jorge <tenreiroj@SEC.GOV>; Kaufman, Jack <KaufmanJa@SEC.GOV>  
**Cc:** randall.lee@cooley.com; mberkovits@cooley.com  
**Subject:** RE: SEC v. Honig et al.

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Nancy,

We write in response to your August 28 email below.

First, in the course of searching for responsive documents up to the filing of the amended complaint, we undertook further procedures to ensure our prior production had been complete and identified a small number of additional responsive documents, which we will be producing along with the post-September 7, 2018 documents. Given the additional action we have taken to respond to the issues you identified in your pre-motion letter, we ask again that you confirm that this action has mooted the last two grounds for a motion to compel identified in your pre-motion letter. We ask you that you

confirm this for us by the close of business on Tuesday so that we can advise the Court on the status of the dispute in our letter due Wednesday.

Second, we will provide a privilege log.

Third, your claim that the issue of Mr. Ladd's production of MGT documents has been appropriately raised for the Court's consideration is inaccurate and misleading. Your August 28 email represents the first time you have specifically requested that Mr. Ladd produce documents before August 1, 2013 and after September 28, 2016. This request comes after two meet-and-confers and after you filed a pre-motion letter with the Court. You have failed to explain why your subpoena to MGT has not yielded the documents you seek. You have not disputed that MGT is separately represented by highly reputable counsel. Your reference to Mr. Ladd's insurance as a reason he should produce documents belonging to a separate corporate entity is inappropriate and baseless. And the case you cite in support of your belated request is wholly inapposite factually.

Regards,  
Chris

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**From:** Brown, Nancy A <[BrownN@SEC.GOV](mailto:BrownN@SEC.GOV)>

**Sent:** Wednesday, August 28, 2019 7:57 AM

**To:** Johnstone, Chris <[Chris.Johnstone@wilmerhale.com](mailto:Chris.Johnstone@wilmerhale.com)>

**Cc:** Bromberg, Katherine <[BrombergK@SEC.GOV](mailto:BrombergK@SEC.GOV)>; Daniels, Jon <[danielsj@SEC.GOV](mailto:danielsj@SEC.GOV)>; Tenreiro, Jorge <[tenreiroj@SEC.GOV](mailto:tenreiroj@SEC.GOV)>; Kaufman, Jack <[KaufmanJa@SEC.GOV](mailto:KaufmanJa@SEC.GOV)>; [randall.lee@cooley.com](mailto:randall.lee@cooley.com); [mberkovits@cooley.com](mailto:mberkovits@cooley.com)

**Subject:** RE: SEC v. Honig et al.

**EXTERNAL SENDER**

Chris,

Thank you for your letter of August 27, 2019.

Thank you, too, for clarifying that you have already produced all responsive documents from Mr. Ladd's personal email addresses from the time period of August 1, 2012 through September 7, 2018.

We expect that with your production of responsive post-September 7, 2018 documents you will also provide a privilege log. Please confirm.

With respect to the issue of your refusal to produce MGT documents, we disagree that we have not raised that for the Court's consideration, and we point you to our own citation to Second Circuit authority in our letter that makes clear that where an officer has not been refused access by the Company, the Company's documents are in his possession, custody and control. As you point out, MGT has already incurred "considerable expense" in responding to our Subpoena, and we have made concessions in deference to their non-party status as a result, which has limited our ability to obtain the documents we requested. We now renew our request to you for those documents, specifically, responsive documents pre-dating August 1, 2013 and post-dating September 28, 2016. In light of the insurance policy you disclosed in your Initial Disclosures, it appears that the burden of production may best be shouldered by Mr. Ladd, rather than the Company, and that Mr. Ladd's role as an officer and director of the Company would make him agreeable to such a cost allocation.

As you know, we have sought to obtain these records from Mr. Ladd since April 23, 2019, and have pressed your refusal to produce on the grounds that Mr. Ladd has no possession, custody or control of such documents in more than one email to you. We are happy to engage with you further in an effort to resolve these issues, but we are not available on Friday, as you propose. We have availability on Thursday, August 29, 2019. Please let us know.

Thank you.

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**From:** Berkovits, Michael <[mberkovits@cooley.com](mailto:mberkovits@cooley.com)>

**Sent:** Tuesday, August 27, 2019 12:15 PM

**To:** Brown, Nancy A <[BrownN@SEC.GOV](mailto:BrownN@SEC.GOV)>; Bromberg, Katherine <[BrombergK@SEC.GOV](mailto:BrombergK@SEC.GOV)>; Daniels, Jon <[danielsj@SEC.GOV](mailto:danielsj@SEC.GOV)>; Tenreiro, Jorge <[tenreiroj@SEC.GOV](mailto:tenreiroj@SEC.GOV)>; Kaufman, Jack <[KaufmanJa@SEC.GOV](mailto:KaufmanJa@SEC.GOV)>

**Cc:** Lee, Randall R. <[randall.lee@cooley.com](mailto:randall.lee@cooley.com)>; Johnstone, Chris <[Chris.Johnstone@wilmerhale.com](mailto:Chris.Johnstone@wilmerhale.com)>

**Subject:** RE: SEC v. Honig et al.

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Nancy,

Please see the attached letter.

Thanks,  
Michael

**Michael J. Berkovits**

Cooley LLP

55 Hudson Yards

New York, NY 10001-2157

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Email: [MBerkovits@cooley.com](mailto:MBerkovits@cooley.com) • [www.cooley.com](http://www.cooley.com)

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**From:** Brown, Nancy A <[BrownN@SEC.GOV](mailto:BrownN@SEC.GOV)>

**Sent:** Monday, August 26, 2019 10:59 AM

**To:** Johnstone, Chris <[Chris.Johnstone@wilmerhale.com](mailto:Chris.Johnstone@wilmerhale.com)>; Bromberg, Katherine <[BrombergK@SEC.GOV](mailto:BrombergK@SEC.GOV)>; Daniels, Jon <[danielsj@SEC.GOV](mailto:danielsj@SEC.GOV)>; Tenreiro, Jorge <[tenreiroj@SEC.GOV](mailto:tenreiroj@SEC.GOV)>; Kaufman, Jack <[KaufmanJa@SEC.GOV](mailto:KaufmanJa@SEC.GOV)>

**Cc:** Lee, Randall R. <[randall.lee@cooley.com](mailto:randall.lee@cooley.com)>; Berkovits, Michael <[mberkovits@cooley.com](mailto:mberkovits@cooley.com)>

**Subject:** RE: SEC v. Honig et al.

Chris,

Thank you for your letter.

Would you please confirm that your search of Mr. Ladd's two personal email accounts for documents responsive to our document request and dated prior to September 7, 2018 produced no responsive documents?

Second, let us know if you think a phone call would be productive to discuss Mr. Ladd's access to MGT's records. Your letter does not address that issue, and it is a subject of our motion to compel. If there are recent developments on that front – such as a request by Mr. Ladd to MGT for authorization to produce MGT documents that MGT denied -- please let us know. Thank you.

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**From:** Johnstone, Chris <[Chris.Johnstone@wilmerhale.com](mailto:Chris.Johnstone@wilmerhale.com)>

**Sent:** Friday, August 23, 2019 7:24 PM

**To:** Brown, Nancy A <[BrownN@SEC.GOV](mailto:BrownN@SEC.GOV)>; Bromberg, Katherine <[BrombergK@SEC.GOV](mailto:BrombergK@SEC.GOV)>; Daniels, Jon <[danielsj@SEC.GOV](mailto:danielsj@SEC.GOV)>; Tenreiro, Jorge <[tenreiroj@SEC.GOV](mailto:tenreiroj@SEC.GOV)>; Kaufman, Jack <[KaufmanJa@SEC.GOV](mailto:KaufmanJa@SEC.GOV)>

**Cc:** [randall.lee@cooley.com](mailto:randall.lee@cooley.com); [mberkovits@cooley.com](mailto:mberkovits@cooley.com)

**Subject:** SEC v. Honig et al.

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Counsel –

Please see attached.

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